

BOARD OF ZONING APPEALS

MINUTES

6:30 PM

March 21, 2012

City Council Chambers

MEMBERS PRESENT: Bernie Bossio, Tom Shamberger, Leanne Cardoso, Jim Shaffer

MEMBERS ABSENT: George Papandreas

STAFF: Heather Dingman, AICP

- I. CALL TO ORDER AND ROLL CALL:** Bernie Bossio called the meeting to order at 6:30 PM
- II. MATTERS OF BUSINESS:** Minutes from the February 15, 2012 hearing were approved: Cardoso made a motion to approve; seconded by Shamberger. Motion carried 3-1, with Shaffer abstaining due to his absence at the February 15, 2012 meeting.
- III. OLD BUSINESS:**
 - A. CU10-18 / Schaupp / 502 White Avenue:** Request by Adelheid Shaupp for an extension of a December 15, 2011 approval to "Re-use of Closed/Vacant School or Church" for property located at 502 White Avenue. Tax Map 36, Parcels 712.1 & 712.2; R-1A, Single-Family Residential District.

Bossio explained that this was approved in December of 2011, and this is just a request for an extension of six months.

Bossio opened the public hearing portion, asking if anyone was present in the audience to speak in favor or against the request. There being none, Bossio declared the public hearing portion closed.

Cardoso made a motion to grant the request of CU10-18 for a six month extension; seconded by Shamberger. Motion carried unanimously.

IV. NEW BUSINESS:

- A. V12-03 / BFS, Inc. / 305 S. University Avenue:** Request by BFS, Inc. for variance relief from Article 1355 as it relates to rear yard setbacks at 305 S. University Avenue; Tax Map 39, Parcel 29.2 and 19; I-1, Industrial District.

Dingman read the Staff report, stating that Bruceton Farm Service, Inc requests to expand an existing gas station and expand an existing parking area on South University Avenue. Addendum A of this report illustrates the location of the subject site.

Article 1355.04 provides that the minimum rear yard setback in the I-1 District is 30 feet. According to the applicant's site plan, the existing BFS building is setback approximately ten feet from the rear yard property line. The building expansion will continue the existing building footprint, and extent the building approximately another 35 feet south west to add 1,250 square feet. The proposed setback of the new addition is uniform with the existing building setback at approximately ten feet from the rear yard property line feet, which requires a 20 foot rear yard setback variance.

Article 1373.02 (A) provides that:

"No legal, pre-existing structure may be enlarged, moved, or otherwise changed in such a manner that increases the extent of its non-conformity, unless a variance from the terms of the ordinance is obtained from the Board of Zoning Appeals."

Although expanding the gas station will not result in the structure becoming closer to the rear property boundary, variance approval is required as the extent of its non-conformity is increased by increasing the length of the non-conforming setback along and approximately parallel to the rear property boundary. The site layout appears to limit development options for a possible building expansion. A northern and eastern building expansion does not appear to be an option since either would impact fueling operations. The southwestern lot side is a large area, free of any obstructions.

Bossio recognized the applicant, Howard Goodstein of 1768 Mileground Rd., Morgantown. Goodstein stated that the building will be a 35 foot extension of the existing footprint with 1250 square foot building in an attempt to modernize the facility.

Bossio opened the public hearing portion of the meeting asking if anyone was present in the audience to speak either in favor or against the request. There being none, Bossio declared the public hearing portion closed.

Dingman read Staff recommendation, stating that The Board of Zoning Appeals must determine whether the proposed request meets the standard criteria for a variance by reaching a positive determination for *each* of the "Findings of Fact" submitted by the petitioner.

Addendum B of this report provides Staff recommended revisions to the petitioner's findings of fact (deleted matter struck through; new matter underlined).

Staff recommends that the Board grant a 20 foot rear yard setback variance for case V12-03 as requested.

Shaffer made a motion to accept the Findings of Facts, as submitted by Staff, with strike-through and underlined portions; seconded by Shamberger. Motion carried unanimously.

The Finding of Facts included in this motion are as follows:

Finding of Fact #1 – There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

The setback on the rear side of the building is a pre-existing nonconforming setback. The existing building currently encroaches into the minimum rear yard setback. The proposed building addition will not extend closer than the existing building. The site layout appears to limit development options for a building expansion.

Finding of Fact #2 – The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

In order to improve the building/structure the existing rear building line must be maintained. The proposed improvements and additions to the subject building will not increase the encroachment into the minimum rear yard setback that already exists.

Finding of Fact #3 – The granting of this variance will not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

The area is Industrial/Commercial in nature. The proposed Improvement is consistent with the surrounding commercial development in the area. The proposed improvements and additions to the subject site appear to be consistent with building improvements completed over the past several years within the immediate area.

Finding of Fact #4 – The granting of this variance will not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because

The proposed addition is consistent with the land use characteristics of the surrounding area. The requested variance cannot contribute to nor mitigate existing traffic congestion along surrounding streets.

Cardoso made a motion to approve V12-03; seconded by Shamberger. Motion carried unanimously.

B. V12-04 / Edwards / 316 Simpson Street: Request by Robert Edwards for variance relief from Article 1335 as it relates to side yard setbacks at 316 Simpson Street; Tax Map 37, Parcel 275; R-1A, Single Family Residential District.

Dingman read the Staff report, stating that the petitioner seeks to expand an existing detached garage by adding a carport that will connect to a new sun room addition at the rear of the house. Addendum A of this report illustrates the location of the subject site.

Article 1335.04 provides that the minimum side setback in the R-1A District is five feet. Based on a legal survey of the property provided by the applicant, the existing one car garage on the subject property is 2.9 feet from the right property line. The applicants propose to expand the home and add an attached carport garage that would project out another two feet beyond the existing garage roofline, bringing the proposed carport setback to approximately ten inches from the neighbor's property line. This request requires a four-foot two inch side yard setback variance.

Article 1373.02 (A) provides that:

“No legal, pre-existing structure may be enlarged, moved, or otherwise changed in such a manner that increases the extent of its non-conformity, unless a variance from the terms of the ordinance is obtained from the Board of Zoning Appeals.”

The applicant states that the requested variance is necessary in order for the property to have an additional covered parking space that connects to the house under a covered walkway. The applicant explains that the roof line of the carport expansion is designed to seamlessly match the pitch of the home's roof. Furthermore, the carport roof must provide enough clearance for a vehicle to pass without hitting the carport support beam.

Bossio recognized the applicant, Robert Edwards of 316 Simpson Street. Edwards stated that they are seeking to preserve green space, and they tried to make the pitch of the roof to match neighboring houses. He submitted some pictures of his home to Vice Chair Cardoso.

Bossio asked how long he has known about the 5 foot side yard setback. He stated that his contractor made him aware of the setback.

Mr. Edwards stated he could come up with same roof line as existing garage, if necessary, but that his property line tapers, so as car port comes down, it gets a little further away from the property line. At the closest point, the fascia line would be 10 inches.

Bossio asked about the space in between structures and how he would be able to maintain that. Mr. Edwards stated that only the roofline would hang over and the width in between would remain the same as far as being able to get in and do maintenance.

Bossio opened the public hearing portion of the meeting, asking if anyone was present in the audience to speak either in favor or against the request:

Contractor for the applicant, Bob Westwood of 944 Bloody Run Road, Morgantown, spoke in favor. Westwood stated that the existing overhang on the garage is approximately three feet from the property line. He stated everything they do would be inside the red brick wall.

Bossio asked if anyone had any comments in opposition. There being no comments in opposition, Bossio declared the public hearing portion closed.

Bossio asked to see the plan prints, which Mr. Westwood provided.

Cardoso asked Mr. Edwards if the neighbor has any objection to this project. Mr. Edwards stated that he has spoken with them and shared the prints of the project and they do not object.

Bossio asked how many other homes in the vicinity encroach on the 5 foot setback. Mr. Edwards stated that there are probably ten homes within two city blocks that do not meet the setback requirement.

Dingman read Staff recommendations, stating that the Board of Zoning Appeals must determine whether the proposed request meets the standard criteria for a variance by reaching a positive determination for *each* of the "Findings of Fact" submitted by the petitioner.

Addendum B of this report provides Staff recommended revisions to the petitioner's findings of fact (deleted matter struck through; new matter underlined).

Staff recommends that the requested variance relief be denied for case V12-04.

Cardoso stated she is torn on this one because on one hand she does not feel this structure is absolutely necessary; however his neighbor's property overhangs his property.

Shamberger stated he feels the setback would be a bigger issue if there was a wall on the side. One of the reasons for the setback is for maintenance of the property. He feels the roof would be minimal maintenance. He stated he did visit the site.

Bossio stated he agrees with Cardoso and feels the Board needs to look at the hardship.

Shamberger mentioned that he felt the applicant had been very diligent about seeking other ways to do this and that this is his only option.

Bossio asked Mr. Edwards to step to the podium for a few more questions. He asked if the wall was a retaining wall. Edwards stated that the wall is about knee high and is mostly a decorative wall, but serves as stabilization too.

Bossio asked Edwards how much further out from the wall his property extends. Edwards answered probably about 18 inches. He does not feel that moving the wall would make any difference.

Bossio asked Mr. Edwards if he would proceed with other options if the Board denied his request for variance. Edwards stated that he would.

Shamberger reiterated that he would not support this request if there was going to be a solid wall, but the fact that it is open space makes a difference.

Bossio stated that, even though the current neighbors are agreeable, the Board needs to consider the future and how other persons living there would feel about it. He further stated he feels they are creating a greater non-conformity, which goes against Code. He asked Dingman to read the portion of the Code, which stated that Article 1373.02(A) states that "no legal pre-existing structure may be enlarged, moved or otherwise changed in such a manner as it increases the extent of its non-conformity, unless a variance from the terms of the ordinance is obtained from the Board of Zoning Appeals." The Board agreed to go through the Findings of Facts on an individual basis.

Finding of Fact #1 – There are no exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

Although this property is in the South Park Historic District of Morgantown, the applicant's request is voluntary. The applicant wants to preserve the historic character of the home. The architect designed a roof line to match our front porch and also the porch roof angle of neighboring houses. To maintain this same roof pitch, and also allow for car clearance, the carport must be closer to the property line than five feet. Constructing the carport with the proposed roofline and setback is one way to preserve the historic character of the home, this may be accomplished several ways.

Finding of Fact #2 – The variance is not necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

The property currently has only one covered and secured parking space. The requested variance would give the property an additional covered and secured parking space not already possessed by the property owner, or all property owners in the neighborhood.

Finding of Fact #3 – The granting of this variance would be harmful to the public welfare and would harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

The existing garage is already close to the property line. The requested carport would be as close as ten inches to the neighboring property line. This does not appear to afford sufficient area to provide maintenance service to the proposed carport or to the neighboring garage without encroaching on adjacent properties.

Additionally, the purpose and intent of yard setbacks is to provide for the adequate distribution of light and air for the preservation of quality of life. Therefore, permitting the construction of structures less than one, or even three feet from the property line (the existing side yard setback) should be discouraged in order to preserve quality of life in the neighborhood.

Finding of Fact #4 – The granting of this variance will not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:

The home will remain a single-family dwelling with safe, covered, off-street parking, which will most likely improve the market value of the property in this neighborhood which has very limited on-street parking. Land-use characteristics will not be altered because the carport will be located in the existing driveway.

Shaffer made a motion that Finding of Fact #1 be found in the negative; seconded by Cardoso. Motion carried 3-1, with Shamberger voting against the motion.

Shaffer made a motion to deny request V12-04 to allow a 4' 2" setback side yard variance; seconded by Cardoso. Motion carried unanimously.

The applicant asked the Chair if the Board could make a motion to allow him to build to build his carport to match the existing setback of his garage, which is 2 feet 9 inches.

Dingman explained that they would need to grant a variance for 2 feet 9 inches. Dingman said they could make a motion to reconsider their prior motion.

Shamberger made a motion to reconsider the prior motion to deny request V12-04; seconded by Cardoso. Motion carried unanimously.

Bossio explained that if a new motion is proposed, the applicant would need to go to Staff with all the needed documentation to make sure the plan is compliant. He asked Dingman if the Board would need to reconsider the Findings of Fact.

Dingman explained that the Board could accept the Findings of Facts as presented by the applicant, but not the request as presented by the applicant.

Cardoso made a motion to reconsider the Findings of Facts; seconded by Shamberger. Motion carried unanimously.

Shamberger made a motion to accept the Findings of Facts, as presented by the applicant; seconded by Cardoso. Motion carried unanimously.

The following Findings of Fact were accepted:

Finding of Fact #1 – There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

This property is in the Historic District of Morgantown. We want to preserve the historic character of the home. The architect designed a roof line to match our front porch and also

the porch roof angle of neighboring houses. To maintain this same roof pitch, and also allow for car clearance, the carport must be closer to the property line than five feet.

Finding of Fact #2 – The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

Without the variance the existing space would not allow for the property right of covered parking and safe, weather-free access to our vehicles and garage.

Finding of Fact #3 – The granting of this variance will not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

We are not adding another enclosed structure, but instead an open carport. The roofline of this carport will be further from the property line than the neighbor's existing garage. This structure will be one of many others in the neighborhood which are close to the property line.

Finding of Fact #4 – The granting of this variance will not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:

The home will remain a single-family dwelling with safe, covered, off-street parking, which will most likely improve the market value of the property in this neighborhood which has very limited on-street parking. Land-use characteristics will not be altered because the carport will be located in the existing driveway.

Shamberger made a motion to grant request V12-04, with the condition that all new construction shall be required to maintain the existing 2.9' foot side yard setback from the southeastern property line established by the existing garage; motion seconded by Shaffer. Motion carried unanimously.

C. V12-05 / GCF2, LLC / 244 McLane Avenue: Request by Lisa Mardis on behalf of GCF2, LLC, for variance relief from Article 13601.03 as it relates to building materials at 244 McLane Avenue; Tax Map 20, Parcel 46; R-3, Multi-Family Residential District, SSOD, Sunnyside South Overlay District.

Dingman read the Staff report, stating that GCF2, LLC seeks to raze the existing structure at 244 McLane Avenue and construct a five unit, fifteen-bedroom multi-family development. The basement unit is one bedroom and will access off of the street right-of-way. The first and second

floors are three bedroom units, and the third and fourth floors are four bedrooms units. Addendum A this report illustrates the site's location and existing conditions.

The following narrative addresses each variance petition separately.

Variance relief from Article 1361.03 (P) as it relates to building materials within the Sunnyside Overlay Districts.

Article 1361.03 (P) provides that:

“Building Materials:

(1) Except for single and two family dwellings, the first two (2) floors of a building shall be constructed of natural materials. Natural materials include stone, brick, and wood siding, but do not include materials such as, or similar to, wood roof shingles, reflective glass, split faced concrete block, imitation stone, and imitation stucco or Drivit. Thirty-five (35) percent of the remaining building facade(s) on the public right-of-way or any facade(s) facing a single-family residence shall also be constructed of natural materials.

(2) Vinyl siding or other composite materials shall not exceed thirty-five (35) percent of a building face that abuts a right-of-way.”

According to the petitioner's application and drawings, the applicant building's plans employ cementitious siding (i.e. Hardie Plank siding); cementitious trim (i.e. Hardie Plank trim); vinyl shutters; and, cast in pattern brick mold finish for exposed foundation walls.

Because the proposed cladding and exposed foundation materials do not meet the natural material and composite material standards noted above, variance relief is required. As stated in the petitioner's application, the owner sought, and was granted, a similar variance in June of 2011 to construct the neighboring multi-family project at 116 Third Street with cementitious siding, cementitious trim, vinyl shutters, and cast in pattern brick mold finish for exposed foundation walls.

Staff met with A.J. Schwartz of EPD, LLC who prepared the Sunnyside Neighborhood Revitalization Plan along with Jim Hunt, Sunnyside Up to discuss the Sunnyside Overlay District policy objectives and merits of, among others, the mandated building materials set forth within the Sunnyside Overlay Districts. Based on consultation with Mr. Schwartz and Mr. Hunt, as well as an evaluation of recent development's, Staff recognizes that “Hardie Plank” is the preferred exterior building material in this area, as it is a hard surface cementitious product that is highly durable and made of natural materials. As such, staff will present a text amendment to the Planning Commission for consideration that provides greater flexibility in cladding material

selection within the Sunnyside Overlay Districts. However, the Board must consider the merits of the petitioner's variance request based on standards currently in effect.

Bossio recognized the applicant, Lisa Mardis, Project Management Services of 160 Fayette Street. Mardis stated that the design professionals have worked diligently to prepare the plans. She thanked the Principal Planner for stating that she will present text amendments to the Commission as these situations arise in the Overlay district, to hopefully spark even more positive development. Mardis requested that the stone veneer may also be used on the exterior foundation walls.

Bossio asked the owner, Doug Shepherd of 906 Stewart Place, Morgantown to introduce himself to the Board. Bossio asked him if the stone used on 116th Third St Project was the same as the material recommended for the subject McLane Avenue project. Shepherd said that it was.

Bossio opened the public hearing portion, asking if anyone was present in the audience to speak in favor or against the request. There being none, Bossio declared the public hearing portion closed.

Dingman read Staff recommendation, stating that the Board must determine whether the proposed requests meet the standard criteria for a variance by reaching a positive determination for *each* of the "Findings of Fact" submitted by the applicant. Each variance petition must be considered and acted upon by the Board separately.

Staff recommends that each of the findings of fact submitted by the petitioner be accepted without revision.

Staff recommends approval of variance V12-05 with the following condition:

Variance relief from Article 1361.03 (P) as it relates to building materials within the Sunnyside South Overlay District:

1. That the above foundation exterior walls must be clad in cementitious siding comprised of a simulated wood grain profile, or stone veneer.

Dingman added that the applicant has also requested that there be an additional allowance for stone veneer.

Shaffer made a motion to find in the positive all Findings of Facts, as submitted; seconded by Shamberger. Motion passed unanimously.

The Findings of Facts included in this motion are as follows:

Finding of Fact #1 – There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

Structures in the vicinity and district have dictated exterior design and proposed cladding materials, such as hardy plank. The Design Professions have attentively attempted to incorporate architectural designs that are fitting with the charter of the area and are durable in a predominantly student-rental environment. The minimal view shed along McLane Avenue does not categorize the proposed development as a prominent feature and has been designed to incorporate many design elements of the Sunnyside Overlay Districts.

Finding of Fact #2 – The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

The Planning and Zoning Code states that natural materials are required on the first two floors of the proposed building. There appears to be no structures in the slightly blighted area that meet this requirement. The proposed development intends to utilize material that has been approved in the Sunnyside Overlay Districts, such as the applicant's development on Third Street, Metro Properties, LLC.

Finding of Fact #3 – The granting of this variance will not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

Incorporating hardy plank and other proposed material in the project will not be harmful to the public welfare or other improvements in the vicinity. The more durable products will last longer and need less maintenance than natural materials. The proposed building will improve the vicinity and hopefully spark future redevelopment in a somewhat blighted area.

Finding of Fact #4 – The granting of this variance will not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:

Granting a variance for building materials cannot add to or mitigate traffic congestion on public streets. The proposed land use is within fitting character of the existing and neighboring structures and will not be modified due to building materials. Market values of adjacent properties should increase with the proposed development and perhaps spark additional development in the area.

Shaffer made a motion to approve request V12-05 with the condition that the above foundation exterior walls must be clad in cementitious siding comprised of a simulated wood grain profile or stone veneer; seconded by Shamberger. Motion carried unanimously.

D. V12-06 / GCF2, LLC / 244 McLane Avenue: Variance relief from Article 1361.03 (E) as it relates to minimum transparency of ground floor facades that are adjacent to public streets; and, Article 1361.03 (O) (6) as it relates to the majority of window openings being recessed from the exterior building wall along the building's primary façade within the Sunnyside Overlay Districts. Tax Map 20, Parcel 46; R-3, Multi-Family Residential District, SSOD, Sunnyside South Overlay District.

Dingman read the narrative from the Staff report for this request asking for variance relief from Article 1361.03 (E) as it relates to minimum transparency of ground floor facades that are adjacent to public streets; and, Article 1361.03 (O) (6) as it relates to the majority of window openings being recessed from the exterior building wall along the building's primary façade within the Sunnyside Overlay Districts.

Article 1361.03 (E) provides that:

"Building facades that are adjacent to public streets and/or open spaces shall have a high degree of ground floor transparency (at least sixty (60) percent)."

Article 1361.03 (O) (6) provides that:

"The majority of window openings shall be slightly recessed (4-8 inches) from the exterior building wall to create a distinct and uniform shadow line for the building's primary facade"

According to the petitioner's application, the percent transparency of the south façade on McLane Avenue (front) is 18.6%. As such, variance relief of 41.4% is required.

The petitioner seeks to develop window lintels, sills, and residential shutters to achieve the desired shadow line rather than provide requisite recessed windows, which requires variance relief.

As stated earlier in this staff report, staff met with A.J. Schwartz and Mr. Jim Hunt to discuss the intent of some of the more frequently appealed regulations in the Sunnyside Overlay District.

A summary of related issues discussed in this meeting included:

The mandated fenestration ratios appear to be more applicable for an urban central business district and not within a streetscape dominated by residential uses.

The design method of achieving desired shadowing effect for windows should be flexible rather than narrowly prescriptive.

Staff will present a text amendment to the Planning Commission for consideration that reduces the transparency ratio standards to better reflect the existing and desired built environment and provide greater design flexibility to achieve desired window shadowing effects. However, the Board must consider the merits of the petitioner's variance request based on standards currently in effect.

Bossio recognized the applicant, Lisa Mardis, Project Management Services of 160 Fayette Street. Mardis stated that the applicant received the same variance at 116 Third Street.

Bossio opened the public hearing portion of the meeting, asking if anyone was present in the audience to speak in favor or opposition to the request. There being none, Bossio declared the public hearing portion closed.

Dingman read the narrative for this request from Staff recommendation, stating that Staff recommends Variance relief from Article 1361.03 (E) as it relates to minimum transparency of ground floor facades that are adjacent to public streets; and, Article 1361.03 (O) (6) as it relates to the majority of window openings being recessed from the exterior building wall along the building's primary façade within the Sunnyside Overlay Districts.

1. All windows on the front façade must include lintels, trim, and sills to provide a frame and desired shadowing effect as illustrated on the submitted architectural renderings.
2. That all windows on the front facade must include sash bars or muntins in at least the upper or top half as illustrated on the submitted architectural renderings.

Shamberger made a motion to accept the Findings of Facts; seconded by Shaffer. Motion carried unanimously.

The Findings of Facts included in this motion are as follows:

Finding of Fact #1 – There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

At a 2011 meeting with Planning Staff, Jim Hunt of Sunnyside Up, and A.J. Schwartz of EPD, LLC who prepared the Sunnyside revitalization Plan, to discuss the Sunnyside Overlay District policy objectives and merits of, among others, the mandated fenestration ratios appear to be more applicable for an urban central business district and not within a streetscape dominated by residential uses forth within the Sunnyside Overlay Districts. The

applicant was approved for same variance in June 2011 on multi-family structure across McLane Avenue on Third Street.

Finding of Fact #2 – The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

The proposed ground floor transparency appears to match or exceed the exiting buildings on the portion of McLane Avenue. It appears that most other structures within the vicinity and Sunnyside overlay Districts do not meet the required 60% ground floor transparency for the front façade set forth in the Zoning Code. Previous developments have received the same variance as the one being proposed.

Finding of Fact #3 – The granting of this variance will not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

Multi-family residential structures containing the required 60% ground floor transparency on the ground floor do not exist within the area. Therefore, the proposed structure will have transparency more fitting with the architectural design of the surrounding buildings and those in the vicinity. The proposed transparency will not be harmful to surrounding property or improvements in the vicinity.

Finding of Fact #4 – The granting of this variance will not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:

The proposed multi-family structure, with less than 60% of ground floor transparency cannot alter land use characteristics as it will have equal or more transparency and fenestration than most of the structures in this section of McLane Ave, and the vicinity. The approval of this variance cannot add to or mitigate traffic congestion on public streets.

Shamberger made a motion to approve request V12-06, with the following conditions

1. All windows on the front façade must include lintels, trim, and sills to provide a frame and desired shadowing effect as illustrated on the submitted architectural renderings.
2. That all windows on the front facade must include sash bars or muntins in at least the upper or top half as illustrated on the submitted architectural renderings.

Seconded by Shaffer. Motion carried unanimously.

E. CU12-03 / Car Tunes / 1233 University Avenue: Request by Gary Squires for Conditional Use approval for an “Automobile Repair Shop, Incidental” at 1233 University Avenue; Tax Map 26A, Parcel 20; B-4, General Business District.

Dingman read the Staff report, stating that the petitioner seeks to establish an “Incidental Automobile Repair Facility” use at the subject location. The applicant is currently operating a retail operation out of the location, selling car stereo and vehicle enhancements, and now requests to install and repair items sold on location. Addendum A of this report illustrates the location of the subject site.

Table 1331.05.01 “Permitted Land Uses” provides that “Automobile Repair Shop, Incidental” uses are permitted in the B-4 District with conditional use approval by the Board of Zoning Appeals. Automobile-Oriented Uses are generally not permitted in the B-4 district, except as a Conditional Use as an “Incidental Repair Shop,” associated with a Principle Use permitted in the district.

Article 1329.02 defines “Automotive Repair Shop” as:

“Any building, structure, improvements, or land used for the repair and/or maintenance of automobiles, motorcycles, trucks, trailers, or similar vehicles including but not limited to body, fender, muffler or upholstery work, oil change and lubrication, painting, tire service and sales, or installation of CB radios, car alarms, stereo equipment or cellular telephones.”

Article 1329.02 defines “Automotive Repair Facility/Shop, Incidental” as:

“Any building, structure or land used for the repair or maintenance of automobiles, motorcycles, trucks, trailers, or similar vehicles, and which is incidental to the primary use. Examples may include, but are not limited to, service bays associated with a gasoline station, and battery and tire repair services and/or oil change services associated with automobile parts stores.”

The proposed vehicle service area will be in the rear and western side of the existing building. The service area is accessed by two loading doors that open to a private drive aisle in the rear of the building, as indicated on the site plan. Retail customer parking is provided along the alley on the northern wall of the building. Car Tunes employs two people. The hours of operation are Monday through Friday 9 A.M. – 5 P.M., Saturday 9 A.M. – 2 P.M.

Table 1331.05.01 “Permitted Land Uses” requires two relevant performance standards for the operation of Automobile Repair Shops, which are recommended as conditions below. These conditions are necessary to mitigate any potential impacts by the proposed Automotive Use on surrounding properties and public rights-of-way.

Bossio recognized the applicant, Gary Squires of 1233 University Avenue. Squires wanted to point out that they will not be dealing with disposal of any hazardous waste.

Cardoso asked what would be the primary purpose of the business. Mr. Squires answered that the retail portion is the biggest part of the business – the selling and installation of CD players, GPS systems, etc.

Bossio opened the public hearing portion of the meeting, asking if anyone was present in the audience to speak in favor or opposition to the request. There being none, Bossio declared the public hearing portion closed.

Dingman read Staff recommendation, stating that the Board of Zoning Appeals must determine whether the proposed request meets the standard criteria for a conditional use by reaching a positive determination for *each* of the “Findings of Fact” submitted by the petitioner.

Finding of Fact #1 – Congestion in the streets is not increased, in that:

The structure has an exit and entrance. The proposed use has adequate drive aisle area to service the requested automobile repair use. Traffic congestion associated with the daily operation of a automobile service use is not anticipated to negatively impact the streets.

Finding of Fact #2 – Safety from fire, panic, and other danger is not jeopardized, in that:

The space has a separate entrance and exit at two locations within the space.

Finding of Fact #3 – Provision of adequate light and air is not disturbed, in that:

The space has proper ventilation and more than adequate lighting.

Finding of Fact #4 – Overcrowding of land does not result, in that:

We have nine parking spaces allotted to 1,200 ft² along with six spaces for the apartment also on the property. The site exceeds minimum parking requirements and adequate drive aisle widths for servicing and queuing stacked vehicles.

Finding of Fact #5 – Undue congestion of population is not created, in that:

As stated above, there is ample parking for the business we conduct. The proposed conditional use request does not contain a residential component.

Finding of Fact #6 – Granting this request will not create inadequate provision of transportation, water, sewage, schools, parks, or other public requirements, in that:

Pre-existing commercial space and has adequate provision of transportation, water, sewage. The proposed development should not require public service beyond that which is currently available within the immediate area.

Finding of Fact #7 – Value of buildings will be conserved, in that:

There will be no renovations performed that would deface the preexisting structure. This use appears to be compatible with surrounding uses and will be operated in a manner that will conserve the value of the buildings in the area.

Finding of Fact #8 – The most appropriate use of land is encouraged, in that:

We are providing a new and exciting service to the area.

Staff recommends approval of CU12-03 with the following conditions:

1. That all storage associated with Automobile Repair Shops shall be indoors.
2. That all Automobile Repair shall be conducted within the buildings or structures on the site.
3. That the conditional use approval granted herein is specific to the petitioner and may not be transferred.

Bossio asked if there are any time limits for noise. Mr. Squires stated they would not work later than 7:00 pm.

Cardoso asked Dingman to explain condition #2, stating that “all automobile repair shall be conducted within the buildings...” Dingman stated that conditions #1 and #2 are required conditions of the zoning code from the “Permitted Land Uses” Article 1331.05.01 Table.

Shaffer made a motion to accept the Findings of Facts as submitted with strike-through and underline portions; seconded by Shamgerger. Motion carried unanimously.

Shaffer made a motion to approve request CU12-03, with the following conditions:

1. That all storage associated with Automobile Repair Shops shall be indoors.
2. That all Automobile Repair shall be conducted within the buildings or structures on the site.
3. All Automobile Repair shall be conducted between the hours of 9 A.M. and 5 P.M.
4. The Automobile Repair Shop shall not handle, process, or store hazardous substances.
5. That the conditional use approval granted herein is specific to the petitioner and may not be transferred.

Seconded by Cardoso. Motion carried unanimously.

- F. V11-46 / Andrew Smith / 426 Drummond Street:** Request by Andrew Smith, on behalf of Smith CPA for variance relief from Article 1367.08 © as it relates to minimum landscape buffer at 426 Drummond Street; Tax Map 6, Parcel 17; PRO, Professional, Residential, and Office District.

The applicant has requested that this case remain tabled.

- G. V11-47 / Andres Smith / 426 Drummond Street:** Request by Andrew Smith, on behalf of Smith CPA for variance relief from Article 1341.07 (I) as it relates to sidewalks at 426 Drummond Street; Tax Map 6, Parcel 17; PRO, Professional, Residential, and Office District.

The applicant has requested that this case remain tabled.

V. OTHER BUSINESS:

- A.** Public Comments (matters not on the agenda)
- B.** Staff Comments: Dingman announced the next Crossroads Comprehensive Plan Visioning Community Workshop on March 28th from 7-9 PM. at University High School. She urged citizens to attend, as this will be very pivotal land-use planning meeting.

VI. ADJOURNMENT: 8:00 PM

MINUTES APPROVED:

May 16, 2012

BOARD SECRETARY:

A handwritten signature in blue ink, reading "Heather W. Dingman", is written over a horizontal line.